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IN THE SUPREME COURT OF THE UNITED STATES

No. 71-1110

OCTOBER TERM, 1971

DON VESTAL, et al.,

*Petitioners*

v.

JAMES R. HOFFA, et al.,

*Respondents*

# PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals

For the Sixth Circuit

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## TABLE OF CONTENTS


Opinions Delivered in Courts Below . . . . . 1
Jurisdiction . . . . . 1
Question Presented for Review . . . . . 2
Statutes Involved . . . . . 2
Statement of the Case . . . . . 2
Reasons for Granting the Writ . . . . . 8
Argument . . . . . 8

APPENDIX (Attached):

Opinion of the United States Court of Appeals for the Sixth Circuit—Appendix I. . . . . 15

Memorandum of the United States District Court for the Middle District of Tennessee holding trusteeship invalid—Appendix II. . . . . 22

Order in Conformity with Memorandum of the United States District Court for the Middle District of Tennessee—Appendix III. . . . . 46

Second Amended Complaint filed In United States District Court for the Middle District of Tennessee—Appendix IV. . . . . 47

Labor-Management Reporting and Disclosure Act of 1959 Titles I and III—Appendix V. . . . . 60

International Brotherhood of Teamsters Constitution Article VI, Section 5(a) Power of General President to Appoint Trustee; Article IX, Section 2 General Vice-President—Duties—Appendix VI. . . . . 61

## TABLE OF AUTHORITIES

### Cases

De Mille v. Am. Fed. of Radio Artists 31 Cal. 2d 139, 187 Pac. 2d 769, 175ALR 382 cert. denied (1948) 333 U.S. 876 68 S. Ct. 906 92 L. Ed. 1152 ..... 13

Morton et al. v. Pacific Coast S.S. Co. 122 Colo. 352, 55 Pac. 1 (1898) ..... 9

National Woodwork Mfrs. Assn. et al. v. NLRB 386 U.S. 612, 18 L. Ed. 2d 357, 87 S. Ct. 1250 (1967) ..... 11

Shreveport Engraving Co. v. United States 143 Fed. 2d 222 (1944) ..... 9

Stettner v. International Printing Pressman & Asst. Union 278 F. Supp 675 (1967) ..... 13

Webster v. Board of Education 140 Colo. 352, 73 Pac. 1070 (1903) ..... 9

Wirtz v. Local 153, Glass Bottle Blowers Assn. 389 U.S. 463, 19 L. Ed. 2d 705, 88 S. Ct. 643 (1968) ..... 11

### Statutes

Labor-Management Reporting and Disclosure Act of 1959, as Amended
Title I, Bill of Rights 29 U.S.C. 411(a)(1) ..... 2
Title III, Trusteeships 29 U.S.C. 462 ..... 2, 12

### Congressional Reports

Interim Report of the Select Committee on Improper Activities in the Labor-Management Field S. Rep. No. 1417, 85th Cong. 2nd Session (1958) ..... 12, 13

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## PETITION FOR A WRIT OF CERTIORARI
### To the United States Court of Appeals For the Sixth Circuit

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Petitioners, Don Vestal and other members of Local 327, Teamsters, Chauffeurs, Helpers and Taxicab Drivers, pray that a writ of certiorari issue to the United States Court of Appeals for the Sixth Circuit, to review the decision and judgment of that court entered on December 3, 1971 reversing the judgment of the District Court for the Middle District of Tennessee, Nashville Division, which dismissed the complaint of the petitioners and enforced a trusteeship by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America over Local 327.

## OPINIONS DELIVERED IN COURTS BELOW

The opinion of the Court of Appeals is reported at 451 Fed. 2d 706 and is printed in Appendix I hereto.

An opinion of the District Court finding the trusteeship imposed over Local 327 void, invalid and unlawful is reported at 329 Fed. Supp. 801 and is printed in Appendix II hereto.

## JURISDICTION

The judgment of the Court of Appeals was entered on December 3, 1971. Jurisdiction to review the decision of the

United States Court of Appeals for the Sixth Circuit is conferred on this Court under Title 28 U.S.C., Sec. 1254.

The portion of that section pertinent to jurisdiction in this review provides as follows:

"Cases in the Courts of Appeals may be reviewed by the following methods:

1. By writ of certiorari granted upon the petition of any party to any civil or criminal case before or after rendition of judgment or decree."

## QUESTION PRESENTED FOR REVIEW

Whether the President of the International Brotherhood of Teamsters could delegate all of his personal, judicial powers and authority to the General Vice-President, when such delegation was contrary to the Constitution of the International Brotherhood of Teamsters and when the delegation violated the provisions of the Labor-Management Reporting and Disclosure Act of 1959, as amended.

## STATUTES INVOLVED

Labor-Management Reporting and Disclosure Act of 1959, as Amended, Title I, Bill of Rights of Members of Labor Organizations, 29 U.S.C. Sec. 411 (a) (1) and Title III, Trusteeships 29 U.S.C. 462. (Appendix V.)

## STATEMENT OF THE CASE

On March 12, 1964, James R. Hoffa, President of the International Brotherhood of Teamsters was found guilty of influencing, impeding and intimidating petit jurors and was sentenced to a fine and imprisonment. In spite of this conviction, Hoffa was re-elected as General President of the Union in July, 1966, at which time Frank Fitzsimmons was elected to the newly created post of General Vice-President. This position was an entirely new one to the constitution of the union, having been created by Hoffa and the 1966 Convention in contemplation of Hoffa's nearing imprisonment, and in an

attempt to retain his position of General President while incarcerated. In the newly changed Constitution, the General Vice-President was to "assume such duties and perform such functions as may be delegated to him by the General President."—

On February 28, 1967, less than two weeks prior to his incarceration, Hoffa delegated to Fitzsimmons all of the duties and functions of the office of General President while he (Hoffa) planned to retain his power and authority during the time he was serving his prison term. No delegation of Hoffa's power and authority was purportedly made to Fitzsimmons, nor could it have been made under the union constitution.

Although the union constitution contained ample provision for the removal of Hoffa as General President because of either his criminal conviction, or because of his inability to properly perform his post, the General Executive Board of the union refused to act, allowing him to continue to serve as General President while in prison. He remained General President until his resignation shortly before the next International Convention in 1971.

The principal plaintiff in this case is Don Vestal, duly elected President and chief executive officer of Local Union 327, Teamsters, Chauffeurs, Helpers and Taxicab Drivers, of Nashville, Tennessee, a union affiliated with the International Brotherhood of Teamsters. The other plaintiffs are members of Local 327, and one plaintiff, Worthy Babb is a member of the executive board of that union.

Vestal has served in the capacity of President and chief executive officer of the local union for nearly twenty years except for one three year period when James Hoffa, President of the International Union came to Nashville and waged a vigorous campaign to defeat Vestal.

As early as 1970, prior to the purported imposition of a trusteeship over his local union, Vestal was an announced candidate for President of the International Union in the election to be held in July, 1971. Frank Fitzsimmons, the International's General Vice-President was also a candidate for

that post. Vestal had successfully waged legal battles against Hoffa, Fitzsimmons and the International Union, once when an attempt was made to weaken his local by dividing it into two separate unions (without the consent of all of the members affected), and once when the International Union had taken away his union card without cause in retaliation for his fights on behalf of members of his local union.

On February 2, 1971, two members of Vestal's local union forwarded a petition to Fitzsimmons requesting the imposition of an emergency trusteeship over Local 327 under the provisions of the International's Constitution. Those members forwarded documents and papers purporting to show that the local union was in poor financial shape.

Concurrent with the forwarding of that petition, telegrams were sent to Fitzsimmons alleging that the automobiles owned by the local union had been repossessed for non payment, and that members were allegedly threatening to withdraw from the union.

Although these telegrams purportely were signed by five members of the local union's executive board, Paul Hartman was represented as being the union's recording secretary, although he had resigned this post some time earlier. Worthy Babb, one of the petitioners herein testified in open court that he was asked by Secretary-Treasurer William L. Ellis to sign the telegram, but had refused to do so. In spite of this refusal, Babb's name appeared on the telegram. Ellis' name constituted one of the three legitimate names of members of the Executive Board out of the seven Executive Board members.

On March 2, 1971, General Vice-President Fitzsimmons advised Ellis that he was having an investigation made of the allegations contained in the telegrams, pursuant to the authority that he claimed to be vested in him by the International Constitution.

The Constitution vested such power in the General President, James R. Hoffa, who had by this time been in prison for four years and who had never been removed by the Executive Board during all of that time. There was no provision in the

Constitution for Fitzsimmons' assuming this power which was in fact personal to Hoffa.

Article VI, Section 5(a) of the International Constitution reads in part as follows:

> "If the General President has or receives information which leads him to believe that any of the officers of a Local Union . . . are dishonest or incompetent, or that such organization is not being conducted in accordance with the Constitution and laws of the International Union or for the membership, or is being conducted in such a manner as to jeopardize the interests of the International Union . . . or if the General President believes that such action is necessary . . . he may appoint a temporary trustee . . . and further provided that, where, in the judgment of the General President, an emergency situation exists within the Local Union . . . the Temporary Trustee may be appointed prior to such hearing . . ." (Appendix VI.)

No mention is made in the Constitution for the General Vice President to assume such personal duties calling for the discretion of Hoffa alone.

Acting presumably on the report of W.W. Teague, International Auditor and employee of the International Union, Fitzsimmons imposed an "emergency trusteeship" over Local 327, appointing another employee of the International as temporary trustee, and retaining William L. Ellis as an officer of the union. The temporary trustee purported to remove all of the officers of the union including Don Vestal replacing them with persons of his own choice. Ellis alone was retained.

While these actions were taking place, the plaintiff Don Vestal as chief executive officer of the local union received word of the repossessed automobiles and instituted an investigation to determine why payments had not been made on the automobiles by William L. Ellis who was chief fiscal officer of the local, and whose duty it was to receive the local's money and pay its bills. Vestal discovered approximately twenty-nine thousand dollars in undeposited checks in the desk of this same Ellis who had sent the telegram to Frank Fitzsimmons alleging

financial malpractice on the part of Vestal and requesting the imposition of the temporary trusteeship.

On May 4, 1971, a panel appointed by General Vice-President Frank Fitzsimmons convened in Nashville to hold a trusteeship hearing. Although Hoffa had never resigned nor been removed as President of the International Union, he failed to act to appoint the panel as required by Article VI, Section 5 of the International Constitution which stated that "the General President shall designate a panel . . ." Instead, under the purported general delegation of all of Hoffa's duties and functions (not power and authority) to Fitzsimmons, Hoffa left the appointment of the panel up to Fitzsimmons.

During the period between the discovery of the checks belonging to the union in Ellis' desk, and the convention of the trusteeship panel in Nashville, Ellis had given his key to the union hall to a friend who entered at night and fired numerous shots into Vestal's office. Some nights later, Ellis and three other persons drove past Vestal's home and fired numerous shots from rifles and pistols into it while Vestal, his family and friends were there at a peaceful gathering. Ellis was captured by the police only a few doors down the street from Vestal's house with several of the rifles and pistols in the car. A search of his automobile's trunk revealed still more undeposited checks belonging to the union amounting to an additional three thousand five hundred dollars.

Although the trusteeship hearing had been scheduled for the large convention rooms of the Nashville Sheraton Hotel where all of the members could attend, it was in fact held in secret, in a small room on the second floor. Don Vestal at this time raised the question of the illegal usurpation of Hoffa's personal powers by Fitzsimmons and refused to submit to the panel. Instead, he had a statement read into the record questioning the panel's authority in view of the fact that it had not been appointed by the General President, James R. Hoffa. He refused to present any evidence until a properly composed panel was convened.

The panel instead chose to ignore Vestal's challenge to its validity, and proceeded, taking evidence from the same William

L. Ellis who had precipitated the trusteeship hearing by his telegram purportedly signed by the union's Executive Board.

After taking its testimony in the absence of Vestal, the decision of the panel was to establish a temporary trusteeship on the grounds that the local union was beset by indebtedness and acts of violence. Such indebtedness and violence was precipitated by William L. Ellis who was retained by the International Union as chief fiscal officer in spite of his participation in the attack on Don Vestal at Vestal's own home. Ellis remains to this day as an appointed officer of Local 327 which is still in the hands of the International Union.

On March 11, 1971, Civil Action 6081 was commenced by Don Vestal and other members of the union as a class action on the behalf of all of its members. In the complaint, the petitioners requested the court to restrain the International Union and its agents from committing further acts of violence, for damages against the International, and for an injunction to restrain the International from interfering with the rights of the members of the local to manage their own affairs. (See Second Amended Complaint, Appendix IV).

Following the grant of a temporary restraining order enjoining the imposition of a trusteeship pending further orders of the Court, the United States District Court for the Middle District of Tennessee denied the plaintiff's motion for preliminary injunction and proceeded to a hearing on the merits of the case.

On May 13, 1971 the cause was tried on the Second Amended Complaint before Hon. L. Clure Morton.

William L. Ellis failed to appear at this trial even though he was named as a defendant in the cause.

On June 11, 1971 the District Court issued a Memorandum and Order (Appendix II, III) addressing itself to the question of whether Vice-President Fitzsimmons could, under the International Constitution impose a trusteeship over Local 327 without the removal or resignation of General President Hoffa. It concluded that the imposition of a trusteeship over Local 327 was in fact illegal and void. The Court in the decision stated

that the authority to invoke a trusteeship upon a local union was vested under the Constitution in the General President himself; that the International Union failed to comply with the provisions of its own constitution in the imposition of the trusteeship over Local 327 and that the trusteeship so imposed was void, invalid and unlawful.

Notice of appeal from this decision was filed by the International Brotherhood of Teamsters and the matter was duly appealed by them to the United States Court of Appeals for the Sixth Circuit.

On December 3, 1971, the United States District Court of Appeals for the Sixth Circuit reversed the action of the District Court and ordered the lower Court to dismiss the Petitioner's complaint and to enforce the trusteeship over Local 327. (Appendix I)

## REASONS FOR GRANTING THE WRIT

The decision of the said Court of Appeals in upholding the imposition of a trusteeship over Local 327 in spite of the International Union disregarding the provisions of its own Constitution and violating the rights of the members under the Labor-Management Reporting and Disclosure Act involves an important question of federal law which has not been, but should be, settled by this Court.

## ARGUMENT

This case presents a unique question which has not been previously considered by this Court. That question is: To what extent the leaders of a labor union can waive the union's constitution to remain in power. The answer to that question vitally affects not only the rights of the more than two million members of the Teamsters Union, but the more than twenty million men and women forming the ranks of organized labor in America.

On February 28, 1967 the most dramatic example of the leadership of a labor union ignoring the wishes of its rank and

file members occured. On that date, James R. Hoffa, General President of the International Brotherhood of Teamsters attempted to delegate all of the power of his office to a subordinate, in contemplation of his forthcoming incarceration in the federal penitentiary for impeding the due administration of justice.

In order to remain General President of the International Brotherhood, Hoffa purportedly delegated **all** of the powers, duties and functions of the General President to the General Vice-President, Frank Fitzsimmons.[1] Under this purported delegation of authority, the General Vice-President allegedly posessed and did in fact exercise **all** of the powers, duties and functions of the General President. The only power, duty or function of the General President that Mr. Hoffa exercised after that alleged delegation was the posession of the title "General President."

This broad delegation of authority in apparently unprecedented in the history of labor law or for that matter in law pertaining to social and fraternal organizations; municipal, county, state and federal governments; and public and private corporations. The petitioners have searched in vain for a case in which the leader of a group delegated all of his powers, duties and functions to another, retaining only an empty title, but none can be found.

The general rule under the maxim *delegates non potest delegare*, is that a delegated power, when made subject to the delegatees judgment or discretion is purely personal and may not be further delegated in the absence of express statutory authorization. *Morton et al. v. Pacific Coast S.S. Co.*, 122 Colo. 352 (1898), 353-355; 55Pac.1; *Webster v. Board of Education*, 140 Colo. 331, 332, (1903) 73Pac. 1070; *Shreveport Engraving Co. v. United States* 143 Fed. 222, 226 (1944).

Merely administrative and ministerial functions may be delegated to assistants whose employment is authorized, but

[1] The language of the purported delegation did not contain the word powers. The subsequent acts of General Vice-President Fitzsimmons show an attempt to exercise not only the duties and functions of the General President but also his power and authority.

there is no authority to delegate acts discretionary or quasi judicial in nature.

The above statement clearly outlines the law in regard to delegation of authority. An administrative or ministerial function may be delegated to an assistant. A discretionary or quasi judicial act cannot be delegated, because it calls for the use of the discretion or judgment of the party in whom the power is vested.

The powers and duties of the General President of the International Brotherhood of Teamsters are set out in Article VI of the International Constitution entitled "General President—Duties and Powers." The distinction between "duties" and "powers" of the general president is maintained throughout the International Constitution.

The duties of the General Vice-President (he has no powers under the Constitution) are set out in Section 2 of Article IX and reads as follows:

> "General Vice President—Duties. Section 2. The General Vice-President shall assume such duties and perform such functions as may be delegated to him by the General President. He shall be permitted to maintain such other offices, positions and functions as the General President shall approve"

There is no provision in the International Constitution where the General President can delegate his "powers" to the General Vice-President. The section pertaining to the General Vice-President allows the delegation only of "duties" and "functions". Nor is there any provision which permits the General President to delegate **all** of his duties and functions. The language of Article IX, Section 2 is clear and unequivocal. The General Vice-President can only "assume such duties and perform such functions as may be delegated to him by the General President."

The Constitution of the International Brotherhood of Teamsters, Article VI, Section 5(a) sets out the power of the General President to appoint trustees. The entire Article VI, Section 5(a) has been carefully drafted in terms so plain that it is clear

that only the General President has the power to appoint a trustee.

The trusteeship provision begins "If the General President has or receives information which leads **him to believe** that any of the officers of a local union or other subordinate body are dishonest or incompetent . . ." (emphasis added).

On line 10 of page 32 of the Constitution, the trusteeship provision continues ". . . or if the General President **believes** that such action is necessary . . ." (emphasis added).

On line 1 of page 33 of the Constitution, the trusteeship provision continues ". . . where, **in the judgment** of the General President and emergency exists . . ." (emphasis added)

Line 24 on page 33 reads ". . . the decision in the case shall be made by the General President **himself**. (emphasis added)

These powers are by their very nature non delegable. How can the General President delegate his power to believe, or to render his judgments? Only the General President "himself" knows what he "believes" and what his "judgment" is.

The Congress of the United States sought to eliminate the abuse of the trusteeship and the policy of unscrupulous union leadership in waiving the union's constitution at will with the passage of the Labor-Management Reporting and Disclosure Act in 1959.

Justice Brennan of the United States Supreme Court discussed the interpretation of this Act in the case of *Wirtz v. Local 153, Glass Bottle Blowers Association, etc.* 389 U.S. 463, 19 L. Ed. 2d 705, 88 S. St. 643 (1968)

> "We have cautioned against a literal reading of congressional labor legislation; such legislation is often the product and compromise between strongly held and opposed views, and its proper construction frequently requires consideration of its wording against the background of its legislative history and in light of the general objectives Congress sought to achieve.

See e.g. *National Woodwork Mfrs. Assn. et al. v. NLRB*, 386 U.S. 612, 619, 18 L. Ed. 2d 357, 363, 87 S. Ct. 1250 (1967).

The Labor-Management Reporting and Disclosure Act is no exception.

In the *Interim Report on the Select Committee on Improper Activities in the Labor Management Field*, S. Rep. No. 1417, 85th Cong. 2nd Session (1958) on pages 443-450 the Teamsters Union was the subject of special findings:

> "At the recent International Convention of the Teamsters in Miami, Mr. Beck and Mr. Hoffa, with the help of their bevy of lawyers, made a mockery of the International Constitution. They showed that they regarded the Constitution as a piece of paper to be obeyed or ignored as it may benefit them."

In this instance, the decision was to waive the Constitution. Without this action, Mr. Hoffa could not have been elected Teamster President.

That is precisely what has happened in this case. So Mr. Hoffa could continue to "serve" as General President of the International Brotherhood of Teamsters, the International Constitution was waived or twisted beyond reason to allow an unprecedented delegation of authority.

Congress in enacting the Labor-Management Reporting and Disclosure Act sought to correct the abuses of trusteeships by providing clear guidelines for the establishment of a trusteeship. Title III of the Act (29 U.S.C. 462) provides:

> "*Purposes for Establishment of Trusteeship.*
> Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of correcting corruption, or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization. Public L. 86-257, Title III, § 302, September 14, 1959, 73 Stat. 531"

The Constitution and bylaws of the Teamsters Union provide in Article VI, Section 5 (a) that only the General President may impose a trusteeship. In the present case, the General Vice-President attempted to impose a trusteeship alleging that all of the powers, duties and functions of the General President had been delegated to him by the General President.

The Constitution and By-Laws of a union constitute a contract between a union and its members and binds all of its members alike. *De Mille v. Am. Fed. of Radio Artists* 31 Cal. 2d 139, 187 P. 2d 769, 175 ALR 382, 389-390, (1947) certiorari denied (1948) 333 U.S. 876, 68 S. Ct. 906, 92 L. Ed. 1152 cited in *Stettner v. International Printing Pressman & Assts. Union* 278 F. Supp. 675 (1967).

Thus the unique question which is presented by this case, one which has not been previously determined by this Court is: May the president of a labor union delegate all of the powers, duties and functions of his office to the Vice-President when such delegation is contrary to the Constitution and the applicable law?

The precedent has been set by the Teamsters Union. The intent of the Congress in passing the Landrum-Griffin Act was clearly to establish a "bill of rights" for rank and file members of labor unions.

To allow the decision of the United States Court of Appeals for the Sixth Circuit to stand unreversed is to allow unscrupulous labor leaders to regard "The constitution as a piece of paper to be obeyed or ignored as it might benefit them." *S. Rep. No. 1417*, 85th Cong. 2nd Session. (1958) pages 443-450

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX I

No. 71-1472

# UNITED STATES COURT OF APPEALS

## FOR THE SIXTH CIRCUIT

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DON VESTAL, ET AL.,
*Plaintiff-Appellees,*

v.

JAMES R. HOFFA, ET AL.,
*Defendant-Appellants.*

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, ETC., ET AL.,
*Plaintiff-Appellants,*

v.

DON VESTAL, ET AL.,
*Defendants-Appellees.*

APPEAL from United States District Court for the Middle District of Tennessee, Nashville Division.

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Decided and Filed December 3, 1971.

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Before WEICK, CELEBREZZE and PECK, Circuit Judges.

WEICK, Circuit Judge. The sole question in this appeal is whether General President James R. Hoffa had the right under the Constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America to delegate authority to General Vice President Frank E. Fitzsimmons to impose a trusteeship over its Local Union 327 of Nashville, Tennessee.

The District Court, construing the constitution of the International Union, held that only the General President had

that authority and that it was non-delegable. The District Court entered an order enjoining the continuation of the trusteeship imposed by General Vice President Fitzsimmons over the local union. The International appealed. We reverse.

The power and authority of the General President to appoint trustees for local unions was provided for in Art. VI Sec. 5 of the Constitution adopted at the International Convention held in July, 1966. The pertinent part is as follows:

"ART. VI, SEC. 5

Power of General President to Appoint Trustees; Duties and Obligations of Local Unions Under Trusteeship

Section 5 (a). If the General President has or receives information which leads him to believe that any of the officers of a Local Union or other subordinate body are dishonest or incompetent, or that such organization is not being conducted in accordance with the Constitution and laws of the International Union or for the benefit of the membership, or is being conducted in such a manner as to jeopardize the interests of the International Union, or its subordinate bodies or if the General President believes that such action is necessary for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures or preventing any action which is disruptive of or interferes with the performance or obligations of other members or Local Unions under collective bargaining agreements, or otherwise carrying out legitimate objects of the subordinate body, he may appoint a temporary Trustee to take charge and control of the affairs of such Local Union or other subordinate body; provided, however, that before the appointment of such temporary Trustee, the General President shall set a time and place for a hearing for the purpose of determining whether such temporary Trustee

shall be appointed, and further provided that where, in the judgment of the General President, an emergency situation exists within the Local Union or other subordinate body, the temporary Trustee may be appointed prior to such hearing, but such hearing shall then commence within thirty (30) days and decision made within sixty (60) days after the appointment of such temporary Trustee; and further provided that in all cases the Local Union or other subordinate body shall be advised of the reason for the appointment. Adequate notice at least ten (10) days prior to the date of the hearing shall be given to the Local Union or other subordinate body involved. In the case of all hearings conducted prior to, or after the establishment of a Trusteeship, the General President shall designate a panel comprised of at least one (1) International Union Vice President and one (1) disinterested member of the International Brotherhood of Teamsters from the area involved. The General President may, at his discretion, appoint an employee of the International Union to such panel. Such representatives shall make their recommendations to the General President orally or in writing within thirty (30) days after the furnishing of the transcript of testimony, and the decision in the case shall be made by the General President himself, which decision shall be made within ten (10) days after such recommendations are received by him, and the decision shall be promptly transmitted to the Local Union or other subordinate body. Appeals, if any, from determinations following such hearings shall be taken directly to the General Executive Board. Appeals, if any, from the decision of the General Executive Board shall be taken to the Convention by only the Local Union or subordinate body affected. Procedures on appeals under this Section, insofar as is consistent with this Section, shall be governed by the provisions of Article XIX. The International Union shall not be responsible for any actions or activities of a Local Union or other subordinate body under Trusteeship unless such actions or activities have been directed or authorized by the Trustee.

"The General Executive Board may modify or add to the procedures established herein for the purpose of assuring compliance with any applicable law.

"(b). The Trustee shall be authorized and empowered to take full charge of the affairs of the Local Union or other subordinate body, to remove any or all officers and appoint temporary officers at any time during his Trusteeship, and to take such other action as in his judgment is necessary for the preservation of the Local Union or other subordinate body and its interests. The terms of office of officers so removed shall terminate as of the date of removal, unless otherwise absolved. The Trustee shall report from time to time on the affairs and transactions of the Local Union or other subordinate body to the General President. His acts shall be subject to the supervision of the General President. The General President may remove Trustees at any time and may appoint successor Trustees.

"(c). The removed officers shall turn over all moneys, books and properties of the Local Union and other subordinate body to the Trustee, who must receipt for same."

At that convention General President Hoffa was re-elected for a term of five years. The delegates to the convention created a new position of General Vice President and elected Mr. Fitzsimmons, who had been Vice President under the old constitution, to that office for a term of five years. Because Mr. Hoffa faced imprisonment on account of his conviction on certain criminal charges, which conviction was then being appealed, and in order to provide continuity of leadership during his confinement, Article IX, § 2 of the 1966 Constitution was enacted, which provides:

"The General Vice President shall assume such duties and perform such functions as may be delegated to him by the General President. He shall be permitted to maintain such other offices, positions and functions as the General President shall approve."

Shortly prior to his imprisonment, Mr. Hoffa, on February 28, 1967, acting pursuant to Article IX § 2 of the International Constitution, delegated to General Vice President Fitzsimmons the performance of all the duties and functions of the office of General President, specifically including authority to impose trusteeships on affiliated unions under authority of Article VI of the Constitution hereinbefore set forth. Such delegation was to become effective upon his confinement.

The General Executive Board, at its meeting held on the same day, approved the delegation of authority made by Mr. Hoffa and interpreted the Constitution as authorizing such delegation.

The authority of the General Executive Board to interpret the International's Constitution was provided in Article IX, § 1:

> "The General Executive Board shall have the authority to interpret and apply the Constitution and laws of the International Union and to decide all questions of law thereunder subject to appeal to the next Convention."

On February 2, 1971, two members of Local 327 forwarded to the General Vice President and the General Executive Board a petition signed by more than four hundred members of Local 327, requesting the imposition of a trusteeship over said local union, which petition was accompanied by documents alleging substantial financial irregularities and information concerning several lawsuits. The General Vice President instructed the International's auditor to conduct an investigation. He made a report finding gross irregularities in the conduct of the affairs of the local union.

General Vice President Fitzsimmons then on March 12, 1971, imposed a temporary trusteeship on Local 327, and appointed W. C. Smith, an experienced officer of another local union, as trustee. He directed that a hearing be held before a panel composed of an International Vice President and two presidents of other local unions, to determine whether the

trusteeship should be continued or terminated. The panel conducted the hearing and unanimously recommended that the trusteeship be continued.

The officers of Local 327 resisted the trusteeship and refused to turn over to the trustee the property and assets of the local union. They instituted an action in the United States District Court to enjoin continuation of the trusteeship. The International union and the trustee instituted an action in the United States District Court to enforce the trusteeship. The two cases were consolidated for hearing.

At the conclusion of the hearing the District Court ruled that the International Constitution did not authorize the General Vice President to impose the trusteeship over Local 327 and was therefore in violation of 29 U.S.C. § 462, and the Court permanently enjoined the International union from continuing the administration of the trusteeship.

An application for a stay was made to the District Court and was denied. A notice of appeal to this Court was then filed by the International union along with a motion for a stay, which was granted by a Judge of this Court. An application to dissolve the stay was made to two Justices of the Supreme Court and was denied by each Justice. The officers of the local union did not comply with the stay order and the case was remanded to the District Court which enforced the stay upon the trustee's execution of a $200,000-bond.

The International Constitution and its rules and regulations were binding upon the union members. *Cleveland Orchestra Comm.* v. *Cleveland Fed'n of Musicians,* 303 F.2d 229 (6th Cir. 1962).

Article IX, § 1 of the Constitution conferred on the General Executive Board power to interpret the Constitution, which it did, and the Board held that the Constitution expressly gave the power of delegation to the General President, and it approved his acts.

On March 1, 1967, representatives from Teamster Joint

Councils from the United States and Canada met and approved the action of the General Executive Board.[1]

Courts are reluctant to substitute their judgment for that of union officials in the interpretation of the union's constitution, and will interfere only where the official's interpretation is not fair or reasonable. *English* v. *Cunningham*, 282 F.2d 848, 850 (D.C. Cir. 1960). See also *Lewis* v. *American Fed'n of State, County & Municipal Employees*, 407 F.2d 1185, 1192 (3d Cir. 1969); *Vestal* v. *International Bhd. of Teamsters*, 245 F.Supp. 623 (M.D. Tenn. 1965).

In our opinion, the interpretation of the International's Constitution by the General Executive Board was fair and reasonable.

The judgment of the District Court enjoining the continuation of the trusteeship is reversed, and this cause is remanded to the District Court with instructions to dismiss the complaint of Vestal, et al., for an injunction, and to enforce the trusteeship over Local 327.

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[1] Mr. Hoffa has since resigned as General President, and Mr. Fitzsimmons was elected to that office to succeed him, at a subsequent Convention.

## APPENDIX II

[Filed June 11, 1971]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CIVIL ACTION No. 6081

DON VESTAL, JOHN B. WELLS, PRICE SAIN, OTTO YORK, JACKIE NEWELL, J. S. LITCHFORD, ROBERT HILL and WORTHY BABB,

v.

JAMES R. HOFFA; FRANK E. FITZSIMMONS, MURRAY W. MILLER, Fourth Vice President and Director of the Southern Conference of Teamsters, RAYMOND SHAFER, International Organizer, EARL WINGO, JAMES MATHIS, WILLIAM L. ELLIS, THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA, SOUTHERN CONFERENCE OF TEAMSTERS, JOINT COUNCIL #87, SAM WEBB, W. C. SMITH, Agent of the above defendants, GARLAND LOCKE, CLYDE HARRIS, DAVID HODGINS, and RED LEAMAN

CIVIL ACTION No. 6138

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSMEN AND HELPERS OF AMERICA, and TEAMSTERS, CHAUFFERS, HELPERS AND TAXICAB DRIVERS LOCAL UNION 327, and W. C. SMITH, INTERNATIONAL TRUSTEE

v.

DON VESTAL, AUGUSTUS G. FARMER and GERALD B. VESTAL

### Memorandum

In Civil Action No. 6081, commenced on March 11, 1971, plaintiffs Don Vestal, John B. Wells, Price Sain, Otto York, Jackie Newell, J. S. Litchford, Robert Hill and Worthy Babb bring suit against James R. Hoffa, Frank

E. Fitzsimmons, Murray W. Miller, as Director of the Southern Conference of Teamsters, and as Fourt Vice President of The International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America (hereinafter referred to as Teamsters International), Raymond Shafer, as an International Organizer for Teamsters International, Earl Wingo, James Mathis, William L. Ellis, Teamsters International, the Southern Conference of Teamsters, Joint Council #87 of Teamsters International, and Sam Webb.

An Amended Complaint was filed on March 22, 1971. A Second Amended Complaint and a First Supplemental Complaint were filed on May 5, 1971. While alleging numerous violations of the Labor-Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. § 401, *et seq.*, the plaintiffs' basic contentions are that Teamsters International has attempted to impose a trusteeship upon Teamsters Local Union 327 for an unlawful purpose, and without complying with the constitution of Teamsters International.

In Civil Action No. 6138, commenced on April 26, 1971, Teamsters International, Local 327, by authority and direction of the appointed trustee, W. C. Smith, and W. C. Smith, as Trustee of Local 327, bring suit against Don Vestal, Augustus G. Farmer, and Gerald B. Vestal. The basic contention of the plaintiffs in this action is that these defendants have refused to recognize W. C. Smith's authority as Trustee of Local 327, have failed and refused to turn over property and records to him belonging to Local 327, and have continued to assert the rights, and to attempt to exercise the powers, of officials of Local 327.

The two actions were consolidated by consent and a final hearing was held on May 13, 1971. At that time the plaintiffs in Civil Action No. 6081 (hereinafter referred to as the original plaintiffs) took a voluntary nonsuit as to defendants Joint Council #87 and the Southern Con-

ference of Teamsters. The Court also granted motions to dismiss as to defendants Hoffa, Miller, Shafer, Webb, and Fitzsimmons due to insufficiency of service of process and the resulting lack of personal jurisdiction over those defendants. The only defendants then remaining in Civil Action No. 6081 were Teamsters International, Wingo, Ellis and Mathis.

It has been clearly demonstrated to the Court and conceded by the parties that the General Vice President of Teamsters International, Frank Fitzsimmons, had appointed W. C. Smith to become Trustee of Local 327, and that since April 19, 1971, Mr. Smith has been in control of the Local Union's offices, and has been attempting to conduct the business affairs of said Local. It has also been clearly demonstrated to the Court, and conceded by the parties, that Mr. Don Vestal, who was the elected President of Local 327, and, as a result, served as the Local's General Manager, has conducted active opposition to the actions of Mr. Smith as Trustee. Since the Court agrees with the argument by counsel for the original plaintiffs and by counsel for Teamsters International that a determination of the validity of the trusteeship imposed on Local 327 will basically resolve both the lawsuits, the Court shall decide that issue first.

Teamsters International has never been properly served as required by Rule 4 of the Federal Rules of Civil Procedure. Teamsters International was served in the same manner and under the same purported authority, T.C.A. 20-235, 238, as those defendants who were dismissed due to insufficiency of service of process. T.C.C. 20-235, 238 provides as follows:

> "20-235. *Jurisdiction of persons unavailable to personal service in state—Classes of actions to which applicable.*—Persons who are nonresidents of Tennessee and residents of Tennessee who are outside the state and cannot be personally served with process

within the state are subject to the jurisdiction of the courts of this state as to any action or claim for relief arising from:

"(a) The transaction of any business within the state;

"(b) Any tortious act or omission within this state;

"(c) The ownership or possession of any interest in property located witnin this state;

"(d) Entering into any contract of insurance, indemnity, or guaranty covering any person, property, or risk located within this state at the time of contracting;

"(e) Entering into a contract for services to be rendered or for materials to be furnished in this state.

"'Person' as used herein shall include corporations and all other entitles which would be subject to service or process if present in this state. Any such person shall be deemed to have submitted to the jurisdiction of this state who acts in the manner above described through an agent or personal representative."

* * *

"20-238. *Extraterritorial personal service—Proof.* —In addition to service of process on the secretary of state as hereinbefore set forth, personal service of process may be made upon any party outside the state by any person over twenty-one (21) years of age and not a party to the action. No order of court shall be required to constitute such person a proper officer to receive and execute the process. An affidavit of the person serving the process shall be filed with the clerk of the court in which the action is pending, stating the time, manner and place of service."

The original plaintiffs attempted service on defendant Teamsters International in Washington, D. C. through the U. S. Marshal's office. Even though the Marshal's return had not been made as of the date of trial, the Court specifically requested that counsel for the original plaintiffs present argument as to the sufficiency of such a return as a substitute for the affidavit required by T.C.A. 20-238, *supra*. Apparently conceding the insufficiency of such a substitute, counsel for the original plaintiffs requested that time be granted to obtain the affidavit of the officer making service. Such a request at trial was deemed to be too late.

Teamsters International has consistently indicated its refusal to voluntarily submit to this Court's jurisdiction, and has consistently contested the propriety of venue in this district, especially regarding the original plaintiffs' prayer that Teamsters International be placed in receivership. While counsel for Teamsters International has mistakenly styled its participation in Civil Action No. 6081 as a "special appearance," provision for which is not made by the Federal Rules of Civil Procedure, nevertheless its objections to service of process, venue, and personal jurisdiction have been clearly asserted and maintained in compliance with Rule 12, Federal Rules of Civil Procedure. For the above-stated reasons, this Court shall consider, regarding defendant Teamsters International, only those issues that are required for a determination of Civil Action No. 6138. For this reason it becomes unnecessary to consider the contention of Teamsters International that the original plaintiffs should be required to exhaust internal union remedies before bringing suit.

One of the original plaintiffs' main contentions is that the trusteeship was not imposed in compliance with the requirements of the constitution of Teamsters International and is therefore illegal and invalid under § 302 of the Labor-Management Reporting and Disclosure Act of 1959.

29 U.S.C. § 462. The original plaintiffs further contend that the trusteeship is illegal and invalid because it was not imposed for any of the lawful reasons set forth by § 302, *supra,* which provides:

> "Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and by-laws of the organization which has assumed trusteeship over the subordinate body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization. Pub. L. 86-257, Title III, § 302, Sept. 14, 1959, 73 Stat. 531."

Regarding these issues, the Court's jurisdiction is based upon § 304 of the L.M.R.D.A. (hereinafter alternatively referred to as the Act), 29 U.S.C. § 464, which provides:

> "SEC. 304. (a) Upon the written complaint of any member or subordinate body of a labor organization alleging that such organization has violated the provisions of this title (except section 301) the Secretary shall investigate the complaint and if the Secretary finds probable cause to believe that such violation has occurred and has not been remedied he shall, without disclosing the identity of the complainant, bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate. Any member or subordinate body of a labor organization affected by any violation of this title (except section 301) may bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate.

"(b) For the purpose of actions under this section, district courts of the United States shall be deemed to have jurisdiction of a labor organization (1) in the district in which the principal office of such labor organization is located, or (2) in any district in which its duly authorized officers or agents are engaged in conducting the affairs of the trusteeship.

"(c) In any proceeding pursuant to this section a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution or bylaws shall be presumed valid for a period of eighteen months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under section 302. After the expiration of eighteen months the trusteeship shall be presumed invalid in any such proceeding and its discontinuance shall be decreed unless the labor organization shall show by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under section 302. In the latter event the court may dismiss the complaint or retain jurisdiction of the cause on such conditions and for such period as it deems appropriate."

As the above section grants jurisdiction to a district court over a labor organization, but not an individual, this Court finds that no cause of action is stated by the original plaintiffs under this section as against the individual defendants, and that this section can confer jurisdiction on this Court only for the purpose of injunctive relief regarding Teamsters International's actions in this district.

In considering the appropriateness of such relief, the Court shall attempt to further the policy and accomplish the purposes for which the Labor-Management Reporting and Disclosure Act of 1959, as amended, was enacted. In order to do so a closer analysis of the Act and its legislative history is necessary.

Section 2 of the L.M.R.D.A., 29 U.S.C. § 401, declares the legislative findings, purposes, and policy upon which the Act was based. In particular subparagraph 2(a) provides:

> "The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights to organize, *choose their own representatives,* bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection; that the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation; and that in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations." (Emphasis supplied.)

Title III of the Act, which regulates the area of trusteeships, clearly indicates that Congress intended, however, that the right of employees to choose their own representatives would remain subject to suspension through the imposition of trusteeship by a parent labor organization upon a subordinate labor organization. It appears from the legislative history of the Act that restrictions were placed on such trusteeships due to widespread flagrant abuse of the device.[1] The Act is clearly remedial

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[1] Senate Report No. 1684, pp. 9-11, June 10, 1958; Cong. Rec. 7365-8, Senate, Apr. 25, 1958; Cong. Rec. 18280, House, Aug. 18, 1958.

legislation requiring a liberal interpretation. *International Brotherhood of Boilermakers, etc.* v. *Braswell,* 388 F.2d 193 (5th Cir. 1968); *Lippi* v. *Thomas,* 298 F.Supp. 242 (M.D. Pa. 1969). The Act in its entirety must be construed so as to promote the principle of union democracy. *Navarro* v. *Gannon,* 385 F.2d 512 (2d Cir. 1967). These considerations enter into the application of Title III of the Act, and the determination of the validity of the trusteeship imposed thereunder. In light of these considerations the Court shall make that determination in the present case.

Generally, the same contentions and allegations are made as defenses in Civil Action No. 6138 by Mr. Vestal as are made in the original plaintiffs' Second Amended and First Supplemental Complaint in Civil Action No. 6081. In essence, these contentions are that Mr. James R. Hoffa initiated a conspiracy, which has been continued through co-conspirators, agents, and servants, essentially all of which are members, and most of whom are officers or employees, of Teamsters International. The alleged objective of the conspiracy was initially to coerce Mr. Vestal into pressuring or persuading a Mr. Vick to change his testimony in a criminal proceeding. Upon Mr. Vestal's failure and refusal to cooperate, the objective of the conspiracy is alleged to have focused upon the destruction of Mr. Vestal as a leader in the affairs of Teamsters International or in Local 327, and personally persecuting him. Mr. Vestal has testified that this conspiracy has included (1) blacklisting him and rendering him unemployed and unemployable in his trade, while a member of the Teamsters International, (2) threats and acts of violence against himself, his family, friends, and supporters, and (3) the financing of schemes to inspire or support lawsuits and prosecutions against himself, Local 327, and his supporters. It is alleged that Teamsters International has secretly supported these lawsuits against Local 327, and has otherwise denied financial benefits to Local 327. The purpose of these actions is allegedly to

bankrupt the Local, create an excuse to place Local 327 in trusteeship, and thereby oust Mr. Vestal as President. The original plaintiffs contend that this conspiracy, if successful, would deprive the members of Local 327 of their right to have the Local led by its elected president in violation of § 101 of the L.M.R.D.A., *supra*. This Court's jurisdiction is based upon 29 U.S.C., §§ 412 and 529.

As shall hereinafter appear, these allegations need not be considered with regard to the disposition of either of these lawsuits insofar as Teamsters International is concerned. Section 302 of the L.M.R.D., *supra*, sets forth the lawful purposes for which a subordinate body of a labor organization, such as Local 327, may be placed in trusteeship by the superior body. More important to the determination of the validity of the present trusteeship, § 302 requires that such "*[t]rusteeships shall be established and administered only in accordance with the constitution and bylaws of the organization which has assumed trusteeship* . . . ." (Emphasis supplied.) L.M.R.D.A., § 302, *supra*.

The determination of whether or not there has been compliance with the constitution of Teamsters International is also necessary before the trusteeship can be presumed valid under § 304(c) of the L.M.R.D.A., *supra*. It is contended on behalf of Mr. Vestal, both as a plaintiff and as a defendant, that the constitution of Teamsters International permits an emergency trusteeship to be invoked solely upon the order of the General President of Teamsters International, and that no other official of that body can be delegated that authority. Article VI, Sec. 5, of the Constitution of Teamsters International provides:

"ART. VI, SEC. 5

"Power of General President to Appoint Trustees; Duties and Obligations of Local Unions Under Trusteeship

"Section 5 (a). If the *General President* has or receives information which *leads him to believe* that

any of the officers of a Local Union or other subordinate body are dishonest or incompetent, or that such organization is not being conducted in accordance with the Constitution and laws of the International Union or for the benefit of the membership, or is being conducted in such a manner as to jeopardize the interests of the International Union, or its subordinate bodies *or if* the *General President believes* that such action is necessary for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures or preventing any action which is disruptive of or interferes with the performance or obligations of other members or Local Unions under collective bargaining agreements, or otherwise carrying out legitimate objects of the subordinate body, *he may appoint* a temporary Trustee to take charge and control of the affairs of such Local Union or other subordinate body; provided, however, that before the appointment of such temporary Trustee, the *General President shall set a time and place for a hearing* for the purpose of determining whether such temporary Trustee shall be appointed, and further provided that *where, in the judgment of the General President, an emergency situation exists* within the Local Union or other subordinate body, the temporary Trustee may be appointed prior to such hearing, but such hearing shall then commence within thirty (30) days and decision made within sixty (60) days after the appointment of such temporary Trustee; and further provided that in all cases the Local Union or other subordinate body shall be advised of the reason for the appointment. Adequate notice at least ten (10) days prior to the date of the hearing shall be given to the Local Union or other subordinate body involved. In the case of all hearings conducted prior to, or after

the establishment of a Trusteeship, the *General President shall designate a panel* comprised of at least one (1) International Union Vice President and one (1) disinterested member of the International Brotherhood of Teamsters from the area involved. The General President may, at his discretion, appoint an employee of the International Union to such panel. *Such representatives shall make their recommendations to the General President orally or in writing* within thirty (30) days after the furnishing of the transcript of testimony, *and the decision* in the case *shall be made by the General President himself,* which decision shall be made within ten (10) days after such recommendations are received by him, and the decision shall be promptly transmitted to the Local Union or other subordinate body. Appeals, if any, from determinations following such hearings shall be taken directly to the General Executive Board. Appeals, if any, from the decision of the General Executive Board shall be taken to the Convention by only the Local Union or subordinate body affected. Procedures on appeals under this Section, insofar as is consistent with this Section, shall be governed by the provisions of Article XIX. The International Union shall not be responsible for any actions or activities of a Local Union or other subordinate body under Trusteeship unless such actions or activities have been directed or authorized by the Trustee.

*"The General Executive Board may modify or add to the procedures established herein for the purpose of assuring compliance with any applicable law.*

"(b). The Trustee shall be authorized and empowered to take full charge of the affairs of the Local Union or other subordinate body, to remove any or all officers and appoint temporary officers at any time during his Trusteeship, and to take such other action

as in his judgment is necessary for the preservation of the Local Union or other subordinate body and its interests. The terms of office of officers so removed shall terminate as of the date of removal, unless otherwise absolved. The Trustee shall report from time to time on the affairs and transactions of the Local Union or other subordinate body to the General President. His acts shall be subject to the supervision of the General President. *The General President may remove Trustees* at any time *and may appoint successor Trustees.*" (Emphasis supplied.)

The section clearly indicates that the authority to invoke a trusteeship upon a local union is solely vested in the General President. It is conceded on behalf of Teamsters International that in the instant case the trusteeship was established upon the judgment, orders and purported authority of the General Vice-President, Frank Fitzsimmons, rather than that of the General President, James Hoffa. There has been a patent failure to comply with the above-quoted section on the part of Teamsters International. It is asserted on behalf of Teamster International, however, that General President Hoffa delegated all of his duties and functions to General Vice-President Fitzsimmons, with an inherent delegation of all of the power and authority necessary to perform the requirements and duties of the office of General President during Hoffa's incarceration. This purported delegation took place at the 3rd Meeting of the General Executive Board of Teamsters International, held February 28-March 1, 1967. The minutes of that meeting, pages 7-9 in pertinent part, are hereinafter set forth.

President Hoffa stated to the General Executive Board:

"'Therefore, *since my absence may only be temporary, a situation will result which was not within the intent of the International Constitution*, and which might require the convening of a new convention in a

very short period of time, with all of the tremendous expense involved in that kind of endeavor.

" 'Accordingly, to avoid such situation and pursuant to Article IX, Section 2,[2] of the International Constitution, I designate General Vice President Fitzsimmons to perform the duties and functions normally performed by the General President (as set forth in Article VI,[3] and other provisions of the International Constitution) during my temporary unavailability.

" 'It is my recommendation that the General Vice President be paid a salary of $45,000.00 while performing such duties. This recommendation is subject to your approval under Article V, Section 1(a).[4]

" 'I also recommend that the General Executive Board acting under authority of Article VII, Section 2(d)[5] authorize General Vice President Fitzsimmons to sign checks or any other documents which require the signature of the General President.

" 'Please accept my sincere thanks and appreciation for your patience during this period of uncertainty as to my status.'

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[2] Article IX, Section 2 of the Intetrnational Constitution deals with the duties of the General Vice President and provides: "The General Vice President shall assume such duties and perform such functions as may be delegated to him by the General President. He shall be permitted to maintain such other offices, positions and functions as the General President shall approve."

[3] Article VI of the Internationl Constitution is captioned "General President—Duties and Powers." Sections 1 and 2 of this Article are respectively entitled "General Duties" and "Judicial Powers."

[4] Article V, Section 1(a) provides that the General Vice President's salary and expenses, ". . . shall be determined by the General President subject to the approval of the General Executive Board."

[5] Article VII, Section 2(d), of the International Constitution provides: "In the event of the incapacity of any person authorized by this Constitution to sign checks or documents, the General Executive Board shall designate another person to exercise such authority."

"First Vice President O'Brien assumed the chair at this time.

"Vice President Flynn made the following statement and motion:

" 'We have all heard the explanation of our General President with respect to the uncertainty of his present situation, and particularly the possibility of his being unavailable temporarily to perform his duties, and then being available again, pending further hearings and appeals and, we hope, ultimately a complete reversal of his conviction.

" 'For all those reasons I now make the following motion:

" '(1) That we concur in his designation of General Vice President Frank Fitzsimmons to perform the duties and functions normally performed by the General President (as set forth in Article VI and other provisions of the International Constitution) during the time the General President will be unavailable temporarily to perform such duties, as being in accordance with our interpretation of the International Constitution under these circumstances.

" '(2) That the General Vice President receive a salary of $45,000.00 per year while performing such duties.

" '(3) That the General Vice President be authorized to sign checks or any other documents which require the signature of the General President.

" '(4) *That this motion become effective on the day that the General President becomes temporarily unavailable.*'

"Vice President Trerotola seconded the motion which was passed unanimously. President Hoffa did

not participate in the discussion or vote on the motion." (Emphasis supplied.)

Article VI, Section 2(a) of the International Constitution provides that the "General President shall have authority to interpret the Constitution and laws of the International Union and to decide all questions of law thereunder between meetings of the General Executive Board . . . ." The delegation was made at the Executive Board Meeting and therefore Mr. Hoffa was not acting within the ambit of the above section at that meeting. Article IX, Section 1, however, provides in relevant part:

> "The General Executive Board shall have the authority to interpret and apply the Constitution and laws of the International Union and to decide all questions of law thereunder subject to appeal to the next Convention. The General Executive Board shall have governing authority over the International Union and its subordinate bodies to the end of upholding the laws and policies of the Brotherhood as expressed in this Constitution."

The purported delegation of the "duties and functions" of the General President to the General Vice President was upon motion by Vice President Flynn to the Executive Board and was approved unanimously, including the expression that such delegation was in accordance with the Executive Board's interpretation of the International Constitution. Minutes, *supra*, at 8.

Counsel for Teamsters International has contended that this interpreation was proper, under the authority conferred by the above-quoted section of the International Constitution, and that this interpretation should not be disturbed by the court in the present case. Further contention is made on behalf of Teamsters International that this delegation was approved by all of the Joint Councils of Teamsters International, including Joint Council #87

with which Local 327 is affiliated, and this serves to ratify the interpretation made in making the delegation, or, at least, to lend weight to its corrections. There does not appear to be any provision for such a "ratification" in the Constitution of Teamsters International.

The relevant case authority indicates a judicial reluctance, but not a refusal, to enter the realm of construction and interpretation of constitutions of labor organizations. In *Communications Workers of America* v. *N.L.R.B.*, 215 F.2d 835, 838 (2d Cir. 1954), the Court stated:

> "We are prepared to give weight to the Union's interpretation of its own rules with respect to membership. But notwithstanding we cannot agree that Article VI, Section 5, of the Union Constitution can be construed as a denial of a member's right to resign."

In *International Association of Machinists, et al.* v. *Friedman*, 252 F.2d 846, 849 (D.C. Cir. 1958), the Court recognized the importance of an interpretation by the Union of that International Union's constitution in the following words:

> "This interpretation of the constitution, not inconsistent with its language, has been adopted by the Association's President, Executive Council and Grand Lodge Convention which measurably adds to its weight."

In *English* v. *Cunningham*, 282 F.2d 848, 850 (D.C. Cir. 1960), the Court stated that it deemed applicable the principle, "that courts will accept the correctness of an interpretation fairly placed on union rules by the union's authorized officials."

The case which is most in point to the present discussion, however, is *Vestal* v. *International Brotherhood of Teamsters*, 245 F.Supp. 623 (M.D. Tenn. 1965). There the

Honorable William E. Miller was faced with an action in which Don Vestal, as President and Business Manager of Local 327, sought to prevent: (1) a mail referendum of only the freighters who were members of Local 327, regarding the issuance of a separate charter to that group, and (2) the subsequent issuance to that group of a separate charter on the basis of any such referendum.

The General President of Teamsters International had determined that such a referendum was proper under the International Constitution. His interpretation of the constitution was appealed to the General Executive Board and was affirmed by that body. With this background the Court stated:

> "Consequently, if their interpretation is not unreasonable, this court should not interject an interpretation of its own. We must examine §1(h) then only to the extent of determining whether or not the defendants' interpretation is reasonable."

The Court found the interpretation unreasonable, declared the referendum null and void, and enjoined the defendants from taking any steps to effectuate the issuance of the separate charter on the basis of the referendum. This Court finds that the same standard of review is applicable in the instant case and the interpretations made by the officials of Teamsters International will be so considered.

It now becomes important to define the areas to be considered by the Court in order to dispose of the matters pending. This Court finds that it is unnecessary and improper to determine whether the interpretation of Article IX, Section 2, of the International Constitution as permitting the delegation to the General Vice President of each and every duty, function, power, and element of discretion granted to the General President by the International Constitution was reasonable. This Court shall

determine only whether or not the constitution authorized a delegation of the authority, judgment, and discretion involved in invoking an emergency trusteeship over a local union, the appointment of a panel to conduct a hearing, and the decision as to whether or not the trusteeship should be continued as required by Article VI, Section 5 (a), *supra*. As previously emphasized, this section vests the General President solely with the authority to exercise his personal judgment in invoking a trusteeship and appointing a panel to conduct a hearing. The section further requires that the decision as to whether or not the trusteeship should be continued be ". . . made by the General President himself." It is conceded on behalf of Teamsters International that the decision to continue the trusteeship was made by the General Vice President rather than the General President, but reliance is again placed upon the attempted delegation *in toto* of all of the duties and functions of the General President, with the inherent delegation of all requisite powers, to the General Vice President.

In the face of such specific, unambiguous language requiring the personal participation of the *General President* and a decision by him, and in the absence of any provision whatsoever for the delegation of this particular power to anyone, this Court finds it unreasonable to interpret Article IX, Section 2, which indicates the General Vice President "shall assume such duties and perform such functions as may be delegated to him by the General President," as a sufficient basis upon which to delegate those particularly personal powers involved in the trusteeship process. The constitution clearly requires that the judgment involved shall be that of the General President. To the extent that reliance is placed upon Article IX, Section 2, Teamsters International cannot succeed. The same conclusion is warranted regarding Article VII, Section 2(d), which is irrelevant to the present issue.

These determinations are not sufficient, however, to resolve the questions concerning Teamsters International's compliance with its own constitution in the imposition and continuance of the subject trusteeship. Article VI, Section 5 (a), as set out *supra*, contains the following provision:

> "The General Executive Board may modify or add to the procedures established herein [regarding trusteeships] for the purpose of assuring compliance with any applicable law."

While not raised as an issue by the parties, the Court has considered the possibility that the General Executive Board has modified these regulations of the International Constitution so as to permit the General Vice President to exercise the powers necessary to impose and continue a trusteeship. All of the arguments and theories of Teamsters International have indicated that such a modification was felt to be unnecessary. No proof was submitted to this Court that the Executive Board has ever considered the possibility of such a modification, much less made one. The Court is not willing to, and shall not, presume to assume what course the General Executive Board would take upon consideration of this possibility. The Court does not determine whether or not such an attempted modification would be "for the purpose of assuring compliance with any applicable law," or would be an unauthorized attempt to amend the constitution.

For the above reasons this Court finds that Teamsters International has failed to comply with the provisions of its own constitution in the imposition of an emergency trusteeship upon Local 327, in the appointment of a panel to conduct the required hearing, or in the decision to continue the trusteeship. For these reasons the trusteeship is deemed void, invalid, and unlawful under § 302 of the L.M.R.D.A., *supra*, and its continuance is hereby enjoined pursuant to this Court's jurisdiction under § 304 of that

Act, *supra*. The relief prayed for in Civil Action No. 6138 is accordingly denied.

Only the claims for relief by the original plaintiffs as against defendants Wingo, Ellis, and Mathis remain. Counsel for the original plaintiffs clearly indicated at trial that no damages were sought as against these defendants. Therefore, only the propriety of injunctive relief is before the Court as to these defendants.

As to defendant Wingo, evidence has been introduced which indicates that this defendant has consistently and vigorously sought the imposition of trusteeship upon Local 327. This defendant admits, indeed asserts, these activities. The critical proof necessary to demonstrate that he has been involved in a conspiracy, or has attempted as an individual to deprive any member of Local 327 of any right protected or created by the L.M.R.D.A., *supra*, has not, however, been forthcoming. Injunctive relief as to this defendant is denied.

As to defendant Mathis, uncontroverted proof has been introduced to show that he was detected in the Union Hall of Local 327 on Sunday, March 7, 1971, by a security officer for the burglar alarm company. It is also uncontroverted that Mr. Mathis had gained entry to the Union Hall by using a key. The Secretary-Treasurer of Local 327, defendant Ellis, confirmed Mr. Mathis' statement to the security officer that Mathis had permission to be in the Union Hall at that time. The proof submitted is insufficient to support granting the relief requested as to this defendant.

The allegations regarding defendant Ellis are numerous and will be considered in the order in which they are raised in the Second Amended, and First Supplemental Complaints. Paragraph 11 of the Second Amended Complaint alleges that defendant Ellis violated Titles I, V and VI of 29 U.S.C. § 401, *et seq*. These violations are alleged to have occurred when: (1) Mr. Ellis allegedly "attempted to take control of the Local Union newspaper in violation

of the bylaws of the Local Union for the purpose of giving employees, who were attempting to extort the public and give the Local bad publicity, and to give grounds for the Local to be put under trusteeship"; and (2) "Mr. Ellis furnished the defendant, Mathis, with keys to the Union Hall for the purpose of shooting up the offices, and then told the police that Mr. Mathis was authorized to be in the Union Hall at 10:15 P.M. on Sunday, March 7, 1971." No proof has been introduced which would tend to support that Mr. Ellis gave him the keys to the building for that purpose.

Paragraph 12 of the Second Amended Complaint alleges that Mr. Ellis cooperated with an International Audit in making "pictures of books and records, not only of the Local Union, but of the Credit Union records and trust fund records . . . in violation of Title III and V of 29 U.S.C. § 401, *et seq.*" The Court is of the opinion that this allegation fails to state a claim upon which relief can be granted under Title III, and that the proof does not establish a violation of Title V. In addition, the plaintiffs, having failed to obtain the requisite leave of court as provided by 29 U.S.C. § 501(b),[6] are without proper standing.

Paragraph 4 of the First Supplemental Complaint alleges that on the night of April 15, 1971, after defendant Ellis telephoned threats to Mr. Vestal, defendant Ellis and three companions drove to the home of Don Vestal. Upon arriving, Ellis and his companions are alleged to have fired numerous bullets into Vestal's home. Ellis is alleged to have thereby violated Title I of the Act, and 29 U.S.C. § 530. From the facts and evidence introduced on behalf of the original plaintiffs, it appears to the Court that the alleged shooting did in fact take place, and that shots were fired from the car in which Ellis was driving, and into it from the direction of Vestal's house.

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[6] 29 U.S.C. § 501(b) permits suit as against an officer of a labor organization for violation of his official duties, but also provides: "No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown which application may be made ex parte."

It further appears to the Court that this shooting took place after Mr. Vestal had fired Mr. Ellis as a Business Agent for Local 327. The interpretation of this incident in the light most favorable to the original plaintiffs is insufficient to state a cause of action under Title I, the "bill of rights" portion of the L.M.R.D.A., *supra*. Section 610 of the L.M.R.D.A., 29 U.S.C. 530, provides as follows:

> "*Deprivation of Rights Under Act by Violence*
> (29 U.S.C. 530)
>
> "SEC. 610. It shall be unlawful for any person through the use of force or violence, or threat of the use of force or violence, to restrain, coerce, or intimidate, or attempt to restrain, coerce, or intimidate any member of a labor organization for the purpose of interfering with or preventing the exercise of any right to which he is entitled under the provisions of this Act. Any person who willfully violates this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both."

There has been no allegation and no proof as to any right afforded Vestal under this Act which Ellis' wrongful conduct was intended to prejudice or prejudiced in fact. The testimony submitted on behalf of the original plaintiffs regarding this incident more clearly establishes personal resentment against Vestal as the reason for the shooting. Viewed from the point of view of defendant Ellis, any firing from his car was in response to shots fired at him. This view was expressed to the Court by witnesses presented on behalf of the original plaintiffs, since Mr. Ellis did not testify or call any witnesses on his own behalf. As proceedings arising out of this shooting are now pending on the state court level, this Court shall not make unnecessary determinations when the incident has not been shown to be material to the present case.

Paragraph 5 of the First Supplemental Complaint alleges that the automobile used by defendant Ellis, which is the property of Local 327, was replevined from the city auto pound on April 16, 1971, the day following the shoot-

ing. It is further alleged that examination of the automobile revealed checks, totaling $1,735.25, which belonged to the Local Union, and had already been received at the Local Union offices and entered on the books of the Local Union. The proof has supported this allegation to that extent, but it is further alleged that Mr. Ellis had absconded. The trusteeship was not imposed until April 19, 1971. At the time the automobile was replevined Mr. Ellis was still the Secretary-Treasurer of Local 327. His silence leaves his possession of the checks unexplained. The proof does not establish by a preponderance of the evidence that Mr. Ellis had possession of these checks for an unlawful purpose. It is contended, however, that Mr. Ellis has failed "to hold its [Local 327's] money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder. . . ." Sec. 501, L.M.R.D.A., 29 U.S.C. § 501. The requisite leave to make such complaint was granted by the Court by its order permitting the filing of the First Supplemental Complaint. 29 U.S.C. § 501(b), *supra*. Sec. 3, Paragraph 5, of the "By-Laws" of Local Union 327 provides:

> "The Secretary-Treasurer shall receive all monies paid to the Local Union, giving receipt therefor, for any dues, initiation fees or other fees, assessments or fines. All monies received from any source whatever shall be deposited in such reliable bank or banks in the name of the Local Union at least twice a month or oftener if possible, as the Executive Board may designate from time to time."

No other provision appears to have been made in the By-laws of the Local regarding the disposition of funds received by the Secretary-Treasurer on behalf of Local 327. No further evidence appears to have been submitted which would be relevant to this issue. It does not appear that Mr. Ellis has been shown to have violated 29 U.S.C. § 501, *supra*. It is as reasonable to speculate that Mr. Ellis had

taken the checks to deposit as it is to draw any other inference.

For the above-stated reasons, the prayer for injunctive relief as to defendant Ellis is denied.

An order in conformity with this Memorandum shall be filed.

/s/ L. CLURE MORTON
*United States District Judge*

## APPENDIX III

[Filed June 11, 1971]

### Order

In conformity with the Memorandum filed in these cases, it is hereby ORDERED that the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, all of its employees, agents, servants, and those acting in concert with it are restrained and permanently enjoined from continuing the administration of the present trusteeship over Teamsters Local Union 327, and from imposing any future trusteeship without compliance with the relevant portions of the constitution and by-laws of the International Brotherhood of Teamsters.

It is further ORDERED that all property of Teamster Local Union 327, including, but not limited to, offices, books, and records, which has been obtained through the trusteeship process of the employees, agents, or servants of the International Brotherhood of Teamsters, or those acting in concert with it, shall be immediately returned to, or placed in the charge of, the duly elected officers of Teamsters Local Union 327, and that an accounting therefore shall be made by the International Trustee, Mr. W. C. Smith.

L. CLURE MORTON
*United States District Judge*

## APPENDIX IV

[Filed May 5, 1971]

### Second Amended Complaint

1. The plaintiffs are citizens of the State of Tennessee and are members of Local 327 of the Teamsters, Chauffeurs, Helpers and Taxicab Drivers, a labor organization within the meaning of the Labor Management Relations Act of 1947, as amended and which is engaged in commerce within the meaning of Section 3(a) of the Labor Management Reporting and Disclosure Act of 1959. The plaintiff, Don Vestal, is the president of Local 327, which is an affiliate of the defendant, Joint Council 87 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as the International or the International Union for the sake of brevity). The defendant, James R. Hoffa, is the General President of the International Union and may be served with process at the Lewisburg Federal Penitentiary in Lewisburg, Pennsylvania. The defendant, Frank E. Fitzsimmons is the General Vice President of the International Union and may be served with process at the principal office of the International Union at 25 Louisiana Avenue, Washington, D. C. 20001. The defendant, Murray W. Miller, is the Fourth Vice President of the International Union and the Director of the Defendant, Southern Conference of Teamsters, which has its principal office at Room 212, 6162 E. Mockingbird Lane, Texas. The defendant, Sam Webb, is the Director of the defendant, Joint Council and can be served with process at 125 57th Street, North, P. O. Box 4508, Birmingham, Alabama 35212. The defendant, Raymond Shafer, may be served with process at 5626 Monterey Drive, San Antonio, Texas. The defendant, Earl Wingo, may be served with process at 2516 Dickerson Road, Nashville, Tennessee. The defendant, James Mathis, may be served with process at Henpeck Lane, Nashville, Tennessee. The defendant, William L. Ellis, may be served with process at Hydes Ferry Pike, Nashville, Tennessee. The defendants, Wingo, Mathis, and

Ellis are members of Local 327 and the defendant, Ellis, is Secretary-Treasurer and an employee of Local 327.

2. Plaintiffs sue on behalf of themselves and all of the members of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, similarly situated and for the members of the Teamsters, Chauffeurs, Helpers, and Taxicab Drivers Local Union 327, similarly situated to enjoin violations of the Labor-Management Reporting and Disclosure Act of 1959 as amended and jurisdiction rests upon 29 U.S.C. 412 and 29 U.S.C. 529.

3. In 1965 the defendant, Hoffa, split Local Union 327 into two (2) separate Local Unions, Local Union 327 and Local Union 480. This was done in violation of Titles I, V, and VI of 29 U.S.C. 401, *et seq.*, for the purpose of taking reprisal against and disciplining. Local 327's members for their refusal to induce Robert D. Vick to change his testimony given in a criminal hearing in Federal Court. The defendant, International Union, under the direction of the defendant, Hoffa, compelled Local Union 327 to pay per capita tax to the International Union and the Southern Conference and Joint Council #87 on members, which were no longer paying dues to Local Union 327. The International Union also compelled Local 327 to give over certain properties to the new Local Union 480, which damaged and injured the financial stability of Local Union 327.

4. That the defendant, James R. Hoffa, the defendant, Frank E. Fitzsimmons, and the defendant, Murray W. Miller, and the defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, their servants, agents, and co-conspirators are using force and violence, and the threat of force and violence and have attempted to restrain and coerce and have attempted to intimidate the plaintiffs for the purpose of interfering with their rights under 29 U.S.C. 401, *et seq.* in violation of 29 U.S.C. 530, in that on March 6, 1971, James Mathis, a servant and agent and co-conspirator of the defendants, and others, went into the Union Hall of

327 and shot up the place, shooting numerous bullets into the door, nameplate and office of the president of Local 327, Don Vestal. In the night time of January 11, 1966, the defendants or their agents and co-conspirators shot into the home of Don Vestal, a member of Local 327.

5. That in 1966, the General Executive Board of the International Union voted strike benefits for the striking members of Local 327 who were striking their employer, the Murray of Ohio Manufacturing Company at Lawrenceburg, Tennessee, as provided for in the International Constitution, but that the defendant, James R. Hoffa, in violation of the International Constitution and in violation of Title V of 29 U.S.C. 401, *et seq.*, conditioned the forwarding of these funds on Robert D. Vick changing the testimony that the said Robert D. Vick had given in a criminal proceeding which involved James R. Hoffa, in which Hoffa's attorney was a defendant. The said James R. Hoffa and his administrative assistant, James Harding, stated that if the testimony was changed, there would be unlimited amounts of money for the strikers at Lawrenceburg, unlimited amounts of money for organizational purposes, and any kind of job that Don Vestal wanted with the International Union and that Robert D. Vick would be given $25,000.00 a year for life. The defendant, Wingo, transmitted several bribe offers to Vick. The plaintiff, Vestal, refused this illegal demand and the monies for the Lawrenceburg strikers were not sent by the International Union, and as a result the strike was lost and the Local Union lost an additional two thousand (2,000) dues paying members.

6. That in 1968 the International Union sent Raymond Shafer, an International Representative, to Nashville, Tennessee for the purpose of removing the plaintiff, Don Vestal, from the office unlawfully and to harass and intimidate the membership of the Local Union, in violation of Title I and Title III of 29 U.S.C. 401, *et seq.* To accomplish this unlawful scheme, Shafer under the orders of the defendants, Miller and Fitzsimmons, hired a Local

Union 327 business agent, James R. Craighead, to become trustee of Local Union 515 in Chattanooga, Tennessee. Once Mr. Craighead had resigned his office and given up his membership in Local Union 327, he was then induced to aid the defendants in the scheme to place Local 327 under trusteeship in violation of Titles I and III of 29 U.S.C. 401, *et seq.* The defendant, International Union, in violation of Title V of 29 U.S.C. 401, *et seq.*, forwarded money to be used for many trips to Nashville and to give money and other things of value to the defendant, Wingo and others to harass and interfere with the members and duly elected officers of Local Union 327 in the exercise of their rights to democratic procedures and equal representation under Title I of 29 U.S.C. 401, *et seq.*

7. Monies were transferred and spent from Local Union 515 in violation of Title III and Title V of 29 U.S.C. 401, *et seq.* along with monies from Joint Council 87 in violation of Title V of 29 U.S.C. 401, *et seq.* for the purposes of destroying Local Union 327, in violation of Title I of 29 U.S.C. 401, *et seq.*

8. In violation of Title V of 29 U.S.C. 401, *et seq.*, the International, by its agent, Shafer, upon the order of the defendant, Miller and Fitzsimmons, would order checks cashed on the account of Local 515 and the money given to Raymond Shafer, who would give the money to the defendant, Wingo, and his wife, Jean Wingo, to be used for expenses in destroying Local Union 327. In this endeavor, the monies of Local 515 were used to rent copying machines and to pay for printing done here in Nashville, on the order of the International to destroy Local Union 327; and these agents of the International at the incidence of Shafer, Wingo, and James Craighead, would attempt to induce members of Local Union 327 to withdraw from Local Union 327 and from the International Union, and set up an independent union. The International had this done, though this constitutes the sort of "dual unionism" specifically prohibited under Article XIX, Section 6 (4), as well as in violation of Article XIX,

Section 6(2), (7), and (8) of the International Constitution. Further, the International Union would pay either directly or with the monies of Local 515, motel bills and other expenses of the Wingos and other persons to plan and put into effect their unlawful conspiracy, which became so flagrant that the International Union was enjoined from placing Local Union 327 under trusteeship by this Court. These activities, in addition to being in violation of the International Constitution, are in violation of Titles I, III, and V of 29 U.S.C. 401, *et seq.*

9. In 1969 the International Union sent two (2) auditors to Local Union 327, nor for the purpose of auditing the books, in accordance with the Constitution of the International Union, but for the purpose of intimidating the plaintiff, Don Vestal, in an attempt to get him to pressure Robert D. Vick to change his testimony, as this was the time that James R. Hoffa was up for parole.

10. In violation of Titles I and V of 29 U.S.C. 401, *et seq.*, in 1970 Mr. Sam Webb, Director of Joint Council #87 and also a member of the Southern Conference of Teamsters, authorized Local Union 327 to employ organizers and that the expenses of their employment would be met by the Joint Council, as such assistance is the purpose of the Joint Council. The expenses of these organizers came to $2,000.00, which the Joint Council now refuses to pay. At the same time the defendant, William L. Ellis, kept $19,000.00 of Local Union 327's funds from the Local Union, and was conspiring with Sam Webb in an attempt to show that Local Union 327 was broke. Whereby, the International could place Local Union 327 under trusteeship, as they have subsequently attempted to do, in violation of Titles I, III, and V, and VI of 29 U.S.C. 401, *et seq.* The Joint Council refused to pay this lawful expense, though in 1968 the Joint Council expended $1,000.00 for the purpose of putting Local Union 327 under trusteeship in violation of Titles I, III, V, and VI of 29 U.S.C. 401, *et seq.* All this was about the time that the appeal of

James R. Hoffa was before the United States Supreme Court.

11. The defendant, Ellis, attempted to take control of the Local Union newspaper in violation of the By-laws of the Local Union for the purpose of giving employees, who were attempting to extort the public and give the Local bad publicity, and to give grounds for the Local to be put under trusteeship. In addition, Mr. Ellis furnished the defendant, Mathis, with keys to the Union Hall for the purpose of shooting up the offices and then told the police that Mr. Mathis was authorized to be in the Union Hall at 10:15 P.M. on Sunday, March 7, 1971. All this was in violation of the defendant Ellis' oath as a member and officer of Local Union 327, and this was in violation of Titles I, V, and VI of 29 U.S.C. 401, *et seq.* At this time, Mr. Ellis knew that Mr. Mathis had filed suits against the Union to put the Local Union under trusteeship and procure signatures on this petition by telling Local Union members the petition was an application for improved insurance and pension benefits. These activities of Mr. Ellis were in violation of Title V of 29 U.S.C. 401, *et seq.*

12. That on or about the 4th day of March, 1971, while the plaintiff, Don Vestal, was out of the city, an International representative, W. W. Teague, came to the Local Union and without authority of the President and in contravention of the Local Union By-Laws, and established procedures and customs of the Local Union, and in conspiracy with defendant, Ellis, did make pictures of books and records, not only of the Local Union, but of the Credit Union records and trust fund records, though he had no authority to do so, in violation of Title III and V of 29 U.S.C. 401, *et seq.*

13. Since 1968, Fyke Farmer has conspired with and been paid monies by agents of the International Union for the purpose of stirring up litigation against Local Union 327 and soliciting persons to become party plaintiffs in lawsuits against officers and members of Local Union 327, and has filed lawsuits against officers and members of

Local Union 327 for the purpose of harassing and intimidating them, and impoverishing them through the payments of legal fees to defend themselves against these groundless suits filed against them.

14. Beginning in early 1971, David Hodgin has conspired with Sam Webb and Murray W. Miller to circulate petitions at the request of the Joint Council and International Union for the purpose of contriving an excuse to put Local Union 327 under trusteeship, and thereby deprive the members of Local Union 327 of their right to have the Local managed by the officers, whom they elected by secret ballot, rather than be ruled by a Trustee appointed by the International Union in Washington, D. C., all in violation of Titles I and III of 29 U.S.C. 401, *et seq.*

15. These above-mentioned activities were while plaintiffs were members of this labor organization and were for the purposes of interfering with or preventing the exercise of the rights of the plaintiffs to be represented equally in the International Union, which is and has been harassing Local Union 327 in an attempt to destroy said Union and prevent the members of the Local Union from having equal rights and privileges in the defendant, International Union, and from having freedom of speech and assembly, and that they are interfering with the duly elected Chief Executive Officer of Local Union 327 in the discharge of his duties, and attempting to deny the members of Local Union 327 of their rights to equal representation at the International Convention, which is to be held in July, 1971, all in violation of Titles I, III, IV, V, and VI of 29 U.S.C. 401, *et seq.*

16. The above-mentioned harassment, intimidation, coercion, and interference by defendants, while the Local Union members' dues were paid, constitutes a violation of 29 U.S.C. 529, *et seq.*

17. That the said James R. Hoffa, the President of defendant, International Union, has been convicted of and is serving a sentence for bribery, all in violation of 29

U.S.C. 504 (a), (1), and (2), *et seq.*, and in violation of Article I, Section 2 of the International Constitution, and that the International Union by permitting the said James R. Hoffa to remain General President is in violation of 29 U.S.C. 504 (a), (1), and (2), *et seq.*, and further, that the acts of Vice-President Fitzsimmons, who is illegally and unconstitutionally usurping the office of General President of the International Union has violated Titles I and V of 29 U.S.C. 401, *et seq.*

18. That on March 12, 1971, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America attempted to, in an illegal manner, place Local 327 under a trusteeship by a servant and agent of the International Brotherhood of Teamsters on the basis of a letter dated March 12, 1971, signed by Frank E. Fitzsimmons, which has been made an exhibit in this Honorable Court; that this was being done under Article XI, Section 5 of the Landrum-Griffin Act, and sent an International organizer, and addressed this letter to him as trustee. However, he was denied the authority of the office of trustees by a restraining order of this Honorable Court for the purpose of accomplishing the ends of the objectives of the conspiracy alleged in this complaint.

19. That the General Vice President is usurping the authority of the President of the International without being duly elected to such office by the membership and will continue to usurp such office until the National Convention which will be held in Miami, Florida in July of 1971, and by occupying such office illegally will attempt, unless prevented, in appointing all of the ushers at the convention, getting all of the votes of the Locals that have been placed under trusteeship illegally since 1966 or since the date that the president has been in prison. By going to the convention, acting illegally, in the capacity of the President, he will be unlawfully exercising the authority to appoint chairmen of all standing committees; placing all the committee with the authority to appoint the Chairman and all the committeemen of special com-

mittees. He will unlawfully exercise the authority to appoint all ushers and the Sergeant at Arms; the officers reporting committee; credentials committee, which makes a determination of delegates seated; constitution committee, which will be responsible for the direction that this International Union will take in the next five (5) years; the resolution committee, which carries great weight during the convention by having the authority to appoint ushers, and sergeant at arms. He will be, unlawfully, authorized to report and to answer to no one but himself. He even will unlawfully exercise the authority to appoint committees that arrange for the programs and agenda on a day to day basis. He also will exercise the sole authority to determine what minutes of the previous day's session is printed and placed in the delegates' seats. During the convention, he will make all determinations of laws of order and interpretation of the Constitution, unless a special meeting is initiated and held by the General Executive Board to take away some of this authority.

20. The Vice-President, illegally acting as President, has and will use the President's discretionary powers to help people on the International payroll; this includes general organizers, International representatives, and some of the vice-presidents. All International representatives, general organizers, and vice-presidents have a vote at the convention and they in turn control the votes in their area of Local Unions that are in trusteeship. The seating of the delegates at the convention is determined by the Chairman of the Credentials Committee, who is appointed by the illegally acting General Vice-President. He also makes a determination on all votes that are not by roll-call votes. Appointed and hired International employees, who are hired and fired and not elected by any membership and constituency have votes as delegates carrying the same weight as a delegate who is democratically and duly elected by his membership. All of this depriving the member of his rights under the "Bill of Rights", of the Labor Management Reporting and Disclosure Act of 1959. The

President also has personal representatives who have a vote in the convention.

21. Due to the International Union's refusal to pay strike benefits to the strikers in Lawrenceburg, Tennessee during the Murray Ohio strike after such benefits were approved by the General Executive Board and the strikers were legally entitled to them; Local Union 327 has been sued for $4,000,000.00 by disaffected strikers and the Local Union has been blamed for this illegal act of the International Union.

22. General Vice-President Fitzsimmons, acting illegally and unconstitutionally as the General President has been appointing Executive Board members of the International Union, in a willfully irresponsible manner which is evidenced by the fact that one of his appointees has been convicted of fourteen (14) counts of violations of the Taft-Hartley law, and Labor Management Reporting and Disclosure Act of 1959. Another of his appointees has recently been indicted for, among other things, counterfeiting United States currency, trading stamps, and food stamps.

23. Plaintiffs further allege that the Local President, Don Vestal, was elected President of said Local over the protest and actual personal participation of James R. Hoffa, and if the Local trusteeship, irrespective of the need thereof, it will deprive the individual members of the Local of their vote for an elected Local President, and otherwise deprive said Local and the membership thereof, of the democratic procedure to which they are entitled under law.

24. Plaintiffs further allege that if preliminary injunctive relief is not granted the International will unlawfully place Local Union 327 under trusteeship immediately. An unlawful attempt to take such action was thwarted only by a temporary restraining order of the Court and even in violation of that order, action was taken to place the Local Union under trusteeship, but was halted after a petition for contempt was filed in this Court.

25. This desire to put Local Union 327 under trusteeship is motivated not by any lawful cause; but for the purpose of removing the Local Union's president and thereby silencing his opposition to the unlawful policies and practices of the International Union's hierarchy, both presently and at the International Union convention which will be held in July of 1971. Such improper purpose is shown in "Exhibit D" attached to the International Union's Motion to Modify the Temporary Restraining Order issued by this Court, in that, though the International Union's General President is now imprisoned for convictions of felonies after exhausting all appeals, the fact that a former employee of Local 327 was indicted and tried and acquitted nearly a year ago is claimed by the International Union to be an emergency requiring the imposition of immediate trusteeship without a fair hearing first. All of this is attempted despite the fact that the General Vice-President of the International Union has no such emergency power even if the International Union was properly motivated in seeking a trusteeship over a Local Union.

26. The imposition of a trusteeship upon Local 327 would create an irreparable damage and harm to the officers and members of Local Union 327 because for among other reasons:

(a) They would be denied their rights at the International Convention, and in running the affairs of their own Local Union guaranteed them by the Labor Management Reporting and Disclosure Act of 1959.

(b) There are numerous collective bargaining agreements now being negotiated for the benefit of the Local Union's members by their elected representative who is familiar with the present agreements and can more effectively represent the members in these negotiations than a stranger to both the employers and employees involved.

(c) Some of the above-mentioned collective bargaining agreements are in the construction industry, and in view

of the impending wage freezes in that industry, time is of the essence in the completion of the negotiation of these agreements.

27. Plaintiffs aver that to petition the International Union for redress of these grievances would be futile and vain, since the defendants acting unlawfully and without authority of the Constitution of the International Union would be the judges of the charges against them, and further, that if injunctive relief is not granted, plaintiffs will suffer irreparable damages, in that as members of Local Union 327, they will be denied their rights under Titles I, III, and VI of 29 U.S.C. 401, *et seq.*, and further, that because of the illegal acts of the defendants, confusion and chaos of the Local Union membership results, and these members are denied the representation, by their duly elected officers, to which they are entitled.

Premises Considered, Plaintiffs Pray:

1. That the International Union be enjoined from using force and violence, threats of the use of force and violence, and from attempting to restrain and coerce or intimidate any member of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, or to interfere with the offices or workings of Local 327 Teamsters, Chauffeurs, Helpers, and Taxicab Drivers.

2. That the defendants be enjoined from misapplying Union funds for the purpose of harassing, intimidating, and coercing the officers and members of Local 327 by paying their co-conspirators to attempt to put Local 327 under trusteeship or otherwise interfere with rights of the members of Local 327 to manage and control their own Local Union affairs.

3. That the defendant, James R. Hoffa, be enjoined from holding office as President of the International and that a receiver or receivers be appointed by this Court for the purpose of calling an election under Article IV, Section 2 of the Constitution of the International Union, and that said receiver or receivers take into their possession all assets of the International Union, and its subordinate

bodies over which it has control of assets, and operate said Union until a constitutional president has been elected.

4. That the defendants, their co-conspirators or agents, specifically W. W. Teague, the auditor for the International Union be enjoined from taking or retaining the books and records of Local 327 out of the Local Union's possession or of making, taking or retaining copies thereof.

5. That the defendant, William L. Ellis, his co-conspirators, agents or servants, be enjoined from calling other meetings of or conducting telephonic polls of the Local 327 Executive Board in violation of the by-laws of Local 327.

7. That the plaintiffs be allowed damages suffered as a result of the unlawful acts of defendants and reasonable attorneys' fees and Court costs.

8. For general relief.

WHITE & VESTAL, *Attorneys*
5203 Charlotte Avenue
Nashville, Tennessee 37209

By DONALD J. VESTAL
Donald J. Vestal

STATE OF TENNESSEE }
COUNTY OF DAVIDSON }

I, Don Vestal, plaintiff in the foregoing Second Amended Complaint make oath that the facts stated herein are true to the best of my knowledge, information, and belief.

DON VESTAL
Don Vestal

Subscribed and sworn to before me on this 3rd day of May, 1971.

EDWARD C. WHITE
*Notary Public*

My Commission expires:
8/19/1974

# APPENDIX V

## Labor-Management Reporting and Disclosure Act of 1959, As Amended

### TITLE I—BILL OF RIGHTS OF MEMBERS OF LABOR ORGANIZATIONS

Bill of Rights

(29 U.S.C. 411)

SEC. 101. (a) (1) EQUAL RIGHTS.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

### TITLE III—TRUSTEESHIPS

Purposes for Which a Trusteeship May Be Established

(29 U.S.C. 462)

Sec. 302. Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization.

## APPENDIX VI

## CONSTITUTION AND BYLAWS
## of the
## International Brotherhood of
## Teamsters, Chauffeurs,
## Warehousemen and Helpers of America

**ART. VI, SEC. 5**

### Power of General President to Appoint Trustee; Duties and Obligations of Local Unions Under Trusteeship

Section 5 (a). If the General President has or receives information which leads him to believe that any of the officers of a Local Union or other subordinate body are dishonest or incompetent, or that such organization is not being conducted in accordance with the Constitution and laws of the International Union or for the benefit of the membership, or is being conducted in such a manner as to jeopardize the interests of the International Union, or its subordinate bodies or if the General President believes that such action is necessary for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures or preventing any action which is disruptive of or interferes with the performance or obligations of other members or Local Unions under collective bargaining agreements, or otherwise carrying out legitimate objects of the subordinate body, he may appoint a temporary Trustee to take charge and control of the affairs of such Local Union or other subordinate body; provided, however, that before the appointment of such temporary Trustee, the General President shall set a time and place for a hearing for the purpose of determining whether such temporary Trustee shall be appointed, and further provided that where, in the judgment of the General President, an emergency

situation exists within the Local Union or other subordinate body, the temporary Trustee may be appointed prior to such hearing, but such hearing shall then commence within thirty (30) days and decision made within sixty (60) days after the appointment of such temporary Trustee; and further provided that in all cases the Local Union or other subordinate body shall be advised of the reason for the appointment. Adequate notice at least ten (10) days prior to the date of the hearing shall be given to the Local Union or other subordinate body involved. In the case of all hearings conducted prior to, or after the establishment of a Trusteeship, the General President shall designate a panel comprised of at least one (1) International Union Vice President and one (1) disinterested member of the International Brotherhood of Teamsters from the area involved. The General President may, at his discretion, appoint an employee of the International Union to such panel. Such representatives shall make their recommendations to the General President orally or in writing within thirty (30) days after the furnishing of the transcript of testimony, and the decision in the case shall be made by the General President himself, which decision shall be made within ten (10) days after such recommendations are received by him, and the decision shall be promptly transmitted to the Local Union or other subordinate body.

## ARTICLE IX
## GENERAL EXECUTIVE BOARD—DUTIES AND POWERS

### General Vice President—Duties

Section 2. The General Vice President shall assume such duties and perform such functions as may be delegated to him by the General President. He shall be permitted to maintain such other offices, positions and functions as the General President shall approve.